SPOILS AND THE PARTY

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The American people have always been complacent about the abuse involved in the spoils system. The enthusiasm for civil service reform has affected "intellectuals" but not the man in the street. Even those who pretend to an interest in the efficiency of the public service are apt to think the advance already accomplished much greater than is the case. When we read about spoils it is usually the story of a fight for their elimination in a specific service or a comparison of present-day standards with those of a generation ago but we are apt to overlook the fact that taken as a whole our party government is still spoils government. The civil service reform movement points the way; it does not represent a cause won.

This is true whether one considers national, state or municipal politics. The greatest party asset of a financial sort in the average campaign is still not the funds contributed by interested and disinterested followers nor even the franchises or contract plums which may be handed over to the faithful, but the prospect of profiting by what Senator Marcy long ago characterized as "the rule that to the victor belong the spoils of the enemy." As a means of getting party work done money contributions are of less importance than the patronage which is to be the reward of workers "who are valuable when the campaign is on."

Spoils in the Federal Service

The advance in the elimination of spoils has been more conspicuous in the federal than in the state and municipal governments. Each administration advertises its good deeds in connection with the civil service in order that it may profit as much as possible by the effect on public opinion. The Civil Service Commission announces,

> The government is doing more work with fewer employees and with increased economy and efficiency. Each year sees a more intensive application and observ-

ance of the rules, because the commission is coming into closer touch with the entire service and because of the coöperation and support of appointing officers.[1]

and the Council of the National Civil Service Reform League reports,

The past year demonstrates the constant growth of popular sentiment throughout the country in favor of the merit and efficiency system. Even in Congress the tide has turned against the spoilsman.[2]

These statements are true, but what has been done should be supplemented by an exposition of what still remains to be done if the real picture is to be secured. There are estimated to be at least 475,000 persons at present in the employ of the executive branch of the national government. Their aggregate salary is about $400,000,000. A third of a century after the enactment of the basic Pendleton Act there are still only 61 per cent of the positions by number under the strict competitive system.[3] The advance we have made, too, is chiefly in the lower and middle grade positions. The higher, better paid, supervisory positions are to a greater degree still the prize of victory at the polls. When we remember that the men in these positions are usually in charge of the work of those who have minor positions of either temporary or permanent tenure it is easy to understand why it is so difficult to insure that efficiency records shall be reliable and underhand methods of inducing campaign contributions of work and money difficult to prevent. This army of senate-confirmed political agents comprising the higher class postmasters, the collectors of customs and internal revenue, district attorneys and marshalls scattered over the entire country are servants of the party primarily and of the people in only a secondary degree. Too often their official duties are nominal only, taking their attention for an hour a day or a day a week, the rest of their energy being devoted to directing the course of politics. Ex-President Taft's recent suggestion that the postmasters of higher grade be abolished since the assistant

[1] *Thirty-second Annual Report of the United States Civil Service Commission, Washington, 1915*, p. 5.

[2] *Proceedings at the annual meeting of the National Civil Service Reform League, 1914*, p. 64.

[3] Dana, R. H.: *Good Government*, Supplement (New York) January, 1915, p. 9 *et seq.* *The Thirty-second Annual Report of the United States Civil Service Commission, Washington, 1915*, p. 5, reports that there were on June 30, 1915, 476,363 officers and employees in the executive civil service.

postmasters do the work anyway, may not be good politics but it points to a very real abuse in our public service.

Spoils in State and Municipal Service

The employees of our states have a total salary list of not less than $300,000,000.[4] In by far the majority of these smaller political units there is not even a beginning of legislation to reform the civil service. Even a list of those which have civil service laws gives the impression that greater advance has been made than the fact justifies. In some commonwealths and municipalities, however, an improvement over the federal legislation is found in that the higher positions have to a greater degree been put upon the merit basis.

State legislation for the merit system in the civil service is in fact almost a matter of the last decade. Before 1905 only New York and Massachusetts had competitive examinations for their state services. In that year Wisconsin passed a state-wide act and Illinois one applying to state charitable institutions. Three years later New Jersey fell into line. Illinois in 1911 passed an advanced law. The next year Colorado applied the merit system to the entire state service and in 1913 Ohio passed a law to affect the service in state, counties and city school districts. California and Connecticut passed more conservative measures.

The last two years have on the whole been a period of reaction in civil service legislation in the states. Kansas passed an act applying to the state service, and New Jersey made important improvements over her law of 1908 and in Louisiana a law was passed creating a civil service commission to have charge of the employees at the port of New Orleans. Elsewhere the outlook for extension of the merit system was not encouraging. In the legislature of Connecticut there was a determined effort to repeal the law passed in 1913. Though unsuccessful, an amendment was passed which in effect allows any head of a department and any state commission to secure exemption from the law. The legislature of Colorado seriously weakened the law in that state. An attempt to provide for the certification to the appointing authority of the entire eligible list instead of the three highest upon it was only defeated in Wisconsin in the Senate. The Ohio legislature in-

[4] Dana, R. H. in *Good Government*, Supplement, Jan., 1914, p. 9 *et seq.*

creased the number of exempt positions. In California a bill to devitalize the Civil Service act was killed only by the "pocket veto" of the governor.[5]

In the municipal services the spoils system is still in all but exceptional cases in unquestioned control. In some of the states with civil service laws there are attempts to put the city services on the merit basis and this is true also of some cities in other states. But in the typical American municipality, with the exception of school teachers, firemen and the police, there is permanence and a legal test of fitness in neither the higher nor the lower ranks of the public service.

Why Extension is Difficult

The review of recent developments indicates that the problem which presents itself to the friends of the merit system is often not what extension can be secured but how can what has already been obtained be safeguarded.

The pressure to overthrow the laws already passed is especially strong whenever a change in administration involves also a change in party politics. In fact, the legislation by which the "classification" of public employees has been extended may not be devoid of partisan character. Such is the case for example when a certain branch of the service formerly filled by political appointments is "covered into" the classified service without an open competitive examination. Under such conditions it may well seem to the new party coming into power that their defeated opponents have filled the offices—by political appointees—and then given them permanency of tenure by putting them under the civil service rules thus in effect making a new rule—"to the vanquished belong the spoils," which is hardly a better maxim than the original one.

In 1908 President Roosevelt put under civil service rules some 15,000 fourth-class postmasters in the territory northwest of the Ohio River. Those then holding these offices, chiefly political appointees, were not required to take any examination. In October, 1912, shortly before the election in which it seemed practically certain the Republican party would be defeated, President Taft "covered in" all the remaining fourth-class postmasters, about 36,000, also without examination. Naturally these actions were not

[5] The recent developments in the states are discussed in *Good Government*, Supplement, Jan., 1916, p. 13–14.

looked upon with favor by the Democratic administration which followed that of Mr. Taft. President Wilson did not, however, revoke the executive orders of his predecessors but he did amend them by providing that no fourth-class postmaster should be given competitive classified status unless "he was appointed as the result of a competitive examination or shall be so appointed."

Even if a party does not set about to repeal the civil service law directly so as to open up more positions for its favorites, it may, through riders on important legislation, place certain classes of offices outside the merit system and see to it that the new places created by its legislation are filled under rules which will allow a free hand in appointments. Often, too, the administration of the law may be so manipulated that all vacancies that arise under it may be filled with good party servants even though the letter of the law be observed. Examples of the first of these practices are frequent in the recent history of the federal civil service.

Since 1913 Congress has shown reactionary tendencies in this sort of legislation by (1) excepting the field income tax collection force from the operation of the civil service law, (2) removing from the classified service deputy collectors and deputy United States marshalls, (3) excepting the employees of the Federal Reserve Board from the operation of the act, a bill passed only by the deciding vote of the Vice-President in the Senate, (4) providing—following the suggestion of the Secretary of Commerce—that fourteen new positions as commercial attaché should be filled without application of the civil service rules, (5) exempting attorneys, special experts and examiners of the trade commission from the operation of the law. Attacks have been made also upon the Indian service and repeatedly upon the post-office service.

Illustrations of the management of the law so as to allow *de facto* control though the civil service rules are in form observed can be cited in great number in both state and federal experience. The abuse is especially liable to occur where the number of competitors in the examination is small. If the law provides that the three with highest standings shall be certified to the appointing authority it will often be possible to appoint the man who would have been appointed under the spoils system. Of course, this practice is still easier where the appointing authority can reject those certified and ask the addition of supplemental names. The

thorough elimination of political manipulation of this sort is only possible where the administrative officer has at heart the enforcement not only of the letter but of the spirit of the law. Even if legislation specifically prohibited the transmission of any information as to the candidates' politics to the appointing power, it would be impossible to insure its proper enforcement if the administration did not share the desire for a non-partisan service.

The working of the federal regulations in this particular may be illustrated by the appointments to fourth-class postmasterships. Section 10 of the Civil Service Act reads:

> No recommendations of any persons who shall apply for office or place under the provisions of this act which may be given by any Senator or member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any persons concerned in making any examination or appointment under this Act.

In the examinations for fourth-class postmasterships—now under the act by executive order—there are seldom more than three or four candidates. Consequently, if the man who would have been appointed under the spoils system passes he is fairly sure of the place he seeks. Postmaster-General Burleson is reported to have publicly solicited recommendations of members of Congress to guide him in making appointments to fourth-class postmasterships.[6] It hardly needs demonstration that the political advantage of having appointees in every hamlet in his district is an important asset to the Congressman. Other appointments in the departments at Washington may be similarly influenced and this obligation under which the appointee feels himself when originally placed may from time to time be increased as he comes up for promotion or is saved from demotion. Not only therefore does the spoils system still control the higher offices but it has an indirect influence upon ranks of the service which may be on paper "classified."

These various ways in which the pressure for patronage makes itself felt in the branches of the civil service already "classified" are symptomatic of the great demand for the offices still filled without reference to the civil service law. Civil service reform, unlike some other propaganda, does not prosper on its own success. It does not accumulate added momentum with each victory, even though the benefits attendant on the adoption of the

[6] *Good Government*, New York, Jan., 1915, p. 1.

merit system be easily demonstrable. Indeed, in some ways every advance makes the next step more difficult. The dispenser of patronage tightens his grip with every loss of power he suffers, the clamor for the remaining offices becomes more persistent, and the public are only on exceptional occasions aroused to an interest in the importance of the civil service issue.

In the present state of the public mind there is little likelihood of any rapid and continuous advance in civil service legislation by the federal government. In the states and cities more may be accomplished both because less has already been done there and because there the public is in closer contact with the officials. On the other hand the average campaign will even here turn on more spectacular issues. In any case what concessions may be secured will be determined by the opinion of the political parties as to whether they can get along without the highly valuable perquisite—the power to distribute offices. The increasing legitimate expense of campaigns coming at the same time as the popular demand for limitation of the sources, amount and purpose of political expenditures, taken with the demand that the valuable asset of spoils be given up, puts the parties in a difficult position. In this situation the corrupt practice acts and civil service reform come to stand in a peculiar relation to each other. The argument runs: if you limit too strictly the sources from which money may be solicited and the amount which may be spent in a campaign you must make it up by letting the candidate distribute offices—money value—in another form. Neither alternative is attractive but to a degree the opposition appears real, at least as to the stricter limitations on amount of expenditure found in the more drastic corrupt practice acts.

Lessening the Demand for Patronage by Creation of Other Party Assets

The way out of the dilemma frequently suggested lies in the creation of some other source of support for the parties thus lessening the pressure for place. There are a number of ways in which this could conceivably be done none of which seem both satisfactory and practical.

It has been suggested that we may develop a class of men of means who, their private fortunes being sufficient to their needs, will devote themselves to public affairs and bear the expense of their own candidatures. The answer is that at present we have no

such class, that a distinction of this sort separating candidate and electorate would be unwelcome to American public opinion and finally that few would be able to bear the expense of a thorough campaign in a large state and none that of the national elections.

Dependence on the great economic interests as a means of relieving pressure for patronage has been suggested. Our previous experience with alliances between big business and politics is not encouraging. Any contribution has at least the appearance of a purchase of immunity from hostile governmental action. There are plenty of illustrations that this is frequently the practical consequence; for examples read the history of Gould's expenditures for the protection of the Erie railroad in New York or the current exposures which show that in return for campaign contributions certain companies have received the promise that they might appoint the men who were to inspect their factories.

The most democratic and from all points of view the most attractive proposal is a greater dependence on the "rank and file" of the party—that is, a dependence on small contributions. Efforts to create a basis of this sort have not been lacking in the larger parties, probably not only from a belief in the correctness of the theory that the party as a whole should bear party expenses but also from the belief that a member who contributes has his loyalty to the party strengthened. To popularize support, the Republican party, so the chairman of the national committee later testified, had between seven and eight hundred representatives in Chicago alone soliciting campaign funds in 1908. The Democrats also have several times used similar methods as did the Progressives in 1912. But such methods are more important in the parties out of power and in those which have no chance of victory. In the larger parties in our times they have never brought in a large percentage of the total which passes through the war chest. Not until we have a radical and at present at least unexpected change in the attitude of the average voter can we hope for a cutting down of pressure for spoils through this means.

An interesting set of experiments in lessening the necessity of large funds or their equivalent for the work of parties are the laws passed in various states to transfer to the public treasury part or all of the expense of campaigns. In the first class are the so-called publicity pamphlets, the first use of which appeared in

Oregon. The state undertakes to publish at a rate below its actual cost a limited amount of campaign material and send a copy to each voter. This it is held will cut down the necessity of spending so much money in circularizing the electorate and give each party an opportunity of answering the arguments of its opponents in a way which will bring the clash of opinion forcibly to the voter's attention. The reception of such schemes has been by no means uniform. It seems to have met with a fair measure of success in Oregon, but the similar Wisconsin experiment has proved a failure. Though the pamphlet was generally used when it was first established, the following election showed a marked falling off of interest and the legislature of 1915 repealed the law.

Of a somewhat similar effect is the practice under which large amounts of campaign literature are now printed at the instance of members of Congress and given wide distribution under congressional frank. Of course, this is a less straightforward and defensible means of shifting to the public purse what are in fact party campaign expenditures.

Colorado passed a more thoroughgoing measure than the publicity pamphlet laws referred to. It provided:

> That the expenses of conducting campaigns to elect state, district and county officers at general elections shall be paid only by the state and by the candidates for office at such elections. . . . .[7]

Within ten days after nomination of candidates the state treasurer was to pay the chairman of the state committee of each political party a sum equal to twenty-five cents for each vote cast at the last preceding general election for the nominee of the party for governor. The state chairman was to turn over to the county chairman sums equal to twelve and one-half cents for each such party vote within the county. Candidates for office could turn over to the committees in charge of the campaign in their districts an amount equal to 40 per cent of the first year's salary of the office or if the salary were paid by fees an amount equal to 25 per cent of the fees collected in the office in the preceding year. After the election the various chairmen were to report the amount and purposes of all expenditure.

At first sight this looks like a logical extention of the process of legalization through which parties have been going for now well

[7] Session Laws of Colorado, 1909, p. 303, Ch. 141.

over a generation. Primaries are regulated, the rent of the places where the voting occurs is paid by the public, the officers of election are paid by the state, the ballots are printed at state cost and as indicated above in some states the cost of circularizing the electorate is borne at least in part by the public treasury. The payment of the rent of halls in which the campaign meetings are to be held, payment for party watchers and similar expenses seem a logical extension of the same development.

There seems to be good reason to believe that a carefully drafted measure might accomplish at least part of the purpose aimed at in the Colorado act, which in fact was never allowed to control an election. The state Supreme Court took original jurisdiction in the unreported case of *Jesse McDonald* v. *W. J. Galligan* and declared the act unconstitutional. No opinion was rendered in the case.[8] What imperfections the court found in the law it is, of course, impossible to state. Even if the act were upheld it is evident that a distribution of funds on the basis of the vote cast at the previous general election may not give the support to parties in proportion to their strength at the election about to occur. Further the law would act as a discouragement to new parties and independent candidacies. It might lead to a stereotyping of political action where free association and flexibility are most to be desired.

The review of the methods proposed and tried to put the parties in a position where they can feel that the asset of patronage is less essential than at present does not leave us hopeful for rapid and general elimination of the spoils system. The fact that we are accustomed to political distribution of offices would of itself make progress in such matters difficult, for except under unusual circumstances political habits change but slowly. More important probably is the feeling on the part of the political leaders that they cannot get along without the patronage until an equivalent asset is developed. This feeling is especially strong in the case of the federal government. In the states and municipalities there is room for greater advance without interferring with resources alleged to be necessary to the party. Here in the smaller units the patronage may probably with greater force be asserted to be more

[8] Letter from R. E. C. Kerwin, Assistant Attorney General of Colorado, November 26, 1915.

a prize for skillful party organization than a means of sustaining party action. That power exercised through the patronage is, in these smaller units, greater than is necessary to healthy party life —granting that under present circumstances the elimination of the spoils system entirely is impracticable—seems to be demonstrated by the experience of the states with the better civil service laws. It is here, therefore, that the greatest advance in civil service reform may be accomplished in the near future, an advance which waits only for the development of an aroused public opinion which will make the demand.